

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA


In the Matter of the Accusation)	No. D-4491
Against:)	
)	OAH No. L-57065
JOSEPH MUDRY, M.D.)	
73-280 Highway 111)	
Palm Desert, California 92260)	
)	
Physician's and Surgeon's)	
Certificate No. A8435)	
)	
Respondent.)	

DECISION

The attached Proposed Decision of the Administrative
Law Judge is hereby adopted by the Division of Medical Quality
_____ as their Decision in
the above-entitled matter.

This Decision shall become effective on February 28, 1993.

IT IS SO ORDERED January 29, 1993.



THERESA L. CLAASSEN
Secretary/Treasurer
Division of Medical Quality
Medical Board of California

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

JOSEPH MUDRY, M.D.
73 280 Highway 111
Palm Desert, California 92260

Physician's and Surgeon's
Certificate No. A8435

Respondent.

) No. D-4491

) OAH No. L-57065

PROPOSED DECISION

On October 20, 1992, in San Bernardino, California,
Vallera J. Johnson, Administrative Law Judge, Office of
Administrative Hearings, State of California, heard this matter.

Heidi R. Weisbaum, Deputy Attorney General, represented
complainant.

Respondent was not present at the hearing but was
represented by Keith H. Long, Esq.

Evidence was received, the record was closed and the
matter was submitted.

FINDINGS OF FACT

I

On her own motion, the Administrative Law Judge takes
official notice that Kenneth Wagstaff filed Accusation No. D-4491
in his official capacity as Executive Director of the California
State Medical Board of California against Joseph Mudry, M.D.
(respondent) on April 15, 1991. Respondent filed his Notice of
Defense requesting a hearing in this matter on April 24, 1991.

II

The Board issued physician and surgeon's certificate No. A8435 to respondent on September 7, 1939. At all times relevant herein said certificate was, and currently is, in full force and effect and is due to expire on February 28, 1993.

III

By and through his attorney, respondent admitted that the allegations set forth in Findings 1 through 18 of the Accusation are true.

IV

By way of mitigation, respondent established that:

A. His current health is very poor. He suffers from cancer of the prostate, emphysema which has developed into congestive heart failure and retinal degeneration. Respondent has been undergoing radiation treatments for his cancer and is on continuous oxygen as treatment for the emphysema. In addition to the foregoing, respondent is on several medications including, but not limited to: Lanoxin (0.1 mg), Lasix (40 mg.), Capoten (25 mg.); Unipryl (400 mg.); Trental; Pepcid (20 mg.); and Aspirin (350 mg.)

B. In October 1991, respondent sold his medical practice to Kenneth A. Harris, M.D.. Respondent continues to practice part-time to assist with the orderly transfer of patients. Respondent sees patients two to three hours per day two days a week. If there is a need for any controlled substances for his patients, they are referred to Dr. Harris.

DETERMINATION OF ISSUES

I

Cause exists to discipline respondent's certificate, pursuant to Business and Professions Code section 2227 because he violated Business and Professions Code section 2236 in that he was convicted of a crime that is substantially related to the qualifications, functions or duties of a physician and surgeon by reason of Finding III.

II

Cause exists to discipline respondent's certificate because he violated Business and Professions Code section 2242(a)

in that he provided prescriptions without a good faith prior examination and a medical indication therefor by reason of Finding III.

III

Cause exists to discipline respondent's certificate because he violated Business and Professions Code section 725 in that his conduct constituted repeated acts of clearly excessive prescribing of drugs by reason of Finding III.

IV

Cause exists to discipline respondent's certificate because he violated Health and Safety Code section 11153(a) in that prescriptions were provided by respondent in the course of his medical practice without a legitimate medical purpose by reason of Finding III.

V

In consideration of the evidence of extenuation and rehabilitation set forth in Finding IV, it would not be contrary to the public interest to allow respondent to retain his certificate to practice medicine subject to probationary terms and conditions.

ORDER

Certificate No. A8435 issued to respondent Joseph Mudry, M.D. is revoked pursuant to Determination of Issues I through IV separately and for all of them. However, the revocation is stayed, and respondent is placed on probation for seven (7) years upon the following terms and conditions:

A. Respondent shall not prescribe, administer, dispense, order or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

B. Respondent is prohibited from practicing medicine until he provides documentary proof to the Division of Medical Quality (Division) that his DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any triplicate prescription forms and federal order forms. Thereafter, respondent shall not re-apply for a new DEA permit without the prior written consent of the Division or its designee.

C. Respondent shall provide documentary evidence to the Division that he sold his practice, the date of the sale and the terms and conditions of the sale.

/

E. Within 60 days of the effective date of this Decision, respondent shall take and pass an oral or written examination, in a subject to be designated by the Division or its designee. If respondent fails this examination, respondent must take and pass a re-examination consisting of a written as well as oral examination. The waiting period between repeat examinations shall be at three month intervals until success is achieved. The Division shall pay the cost of the first examination, and respondent shall pay the cost of any subsequent re-examinations.

F. Respondent shall not practice medicine until he has passed the required examination and has been so notified by the Division in writing. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.

G. Respondent is prohibited from engaging in solo practice.

H. Within 30 days of the effective date of this Decision, respondent shall submit to the Division for its prior approval a plan of practice in which respondent's practice shall be monitored by another physician in respondent's field of practice who shall be primarily responsible for the patients seen by respondent. The physician selected as monitor shall also provide periodic reports to the Division.

If the monitor resigns or is no longer available, respondent shall, within 15 days, move to have a new monitor appointed, through nomination by respondent and approval by the Division.

I. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

J. Respondent shall comply with the Division's probation surveillance program.

K. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice. If respondent's medical condition prohibits such interviews, he must provide documentary evidence thereof to the Division's medical consultant.

L. The period of probation shall not run during the time respondent is residing or practicing outside the jurisdiction of the State of California. If, during the period of probation, respondent moves out of the jurisdiction of the State of California to reside or practice elsewhere, respondent

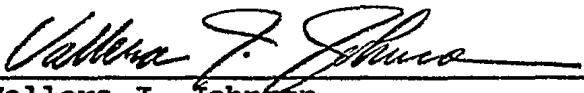
is required to immediately notify the Division in writing of the date of departure, and the date of return, if any.

M. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in the State of California.

N. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

Upon successful completion of probation, respondent's certificate shall be fully restored.

Dated: November 5, 1982


Vallera J. Johnson
Administrative Law Judge
Office of Administrative Hearings

VJJ:LN/S

1 JOHN K. VAN DE KAMP, Attorney General
of the State of California
2 THOMAS S. LAZAR,
Deputy Attorney General
3 Department of Justice
110 West A Street, Suite 700
4 San Diego, California 92101
Telephone: (619) 238-3327

5 Attorneys for Complainant
6

7 BEFORE THE
8 MEDICAL BOARD OF CALIFORNIA
9 DIVISION OF MEDICAL QUALITY
10 DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA
12

13 In the Matter of the Accusation)	NO. D-4491
14 Against:)	
15 JOSEPH MUDRY, M.D.)	<u>ACCUSATION</u>
16 73 280 Highway 111)	
17 Palm Desert, California 92260)	
18 Physician's and Surgeon's)	
19 Certificate No. A8435)	
20 Respondent.)	

21 COMES NOW Complainant Kenneth Wagstaff, who as cause
22 for disciplinary action, alleges:

23 1. Complainant is the Executive Director of the
24 California State Medical Board of California (hereinafter the
25 "Board") and makes and files this accusation solely in his
official capacity.

26 LICENSE STATUS

27 2. On or about September 7, 1939, Physician's and
28 Surgeon's Certificate No. A8435 was issued by the Board to Joseph

1 Mudry, M.D. (hereinafter "respondent"), and at all times relevant
2 herein, said certificate was, and currently is, in full force and
3 effect.

4 STATUTES

5 3. Business and Professions Code section 2227 provides
6 that the certificate of a licensee may be revoked, suspended, or
7 placed on probation.

8 4. Business and Professions Code section 2234 provides
9 that the Division of Medical Quality shall take action against
10 any licensee who is charged with unprofessional conduct.

11 5. Business and Professions Code section 2236
12 provides, in part, that:

13 "(a) The conviction of any offense substantially
14 related to the qualifications, functions, or duties of a
15 physician and surgeon constitutes unprofessional conduct
16 within the meaning of this chapter. The record of
17 conviction shall be conclusive evidence only of the fact
18 that the conviction occurred."

19 6. Business and Professions Code section 2238
20 provides, inter alia, that a violation of any statute or
21 regulation of the State of California regulating dangerous drugs
22 or controlled substances constitutes unprofessional conduct.

23 7. Business and Professions Code section 2242,
24 subdivision (a), provides that the prescribing of dangerous drugs
25 as defined in section 4211 of the Business and Professions Code,
26 without a good faith prior examination and medical indication
27 therefor, constitutes unprofessional conduct for a physician and
28 surgeon.

1 8. Business and Professions Code section 725 provides
2 that repeated acts of clearly excessive prescribing of drugs as
3 determined by the standard of the community of licensees is
4 unprofessional conduct for a physician and surgeon.

5 9. Health and Safety Code section 11153, subdivision
6 (a), a statute regulating controlled substances, provides, inter
7 alia, that a prescription for a controlled substance shall only
8 be issued for a legitimate medical purpose.

9 Drugs

10 10. At all times herein mentioned the following drugs
11 were and are controlled substances and/or dangerous drugs as
12 hereinafter alleged:

13 Valium is classified as a Schedule IV controlled
14 substance pursuant to the Health and Safety Code,
15 section 11057, subdivision (d)(7).

16 CHARGES

17 11. Respondent is subject to Business and Professions
18 Code section 2236 in that he has been convicted of an offense
19 substantially related to the qualifications, functions, or duties
20 of a physician and surgeon as follows:

21 A. On or about July 10, 1990, in the *Municipal Court*
22 *of California, Desert Judicial District, County of*
23 *Riverside*, in a case entitled, *People of the State of*
24 *California v. Joseph Mudry*, Case No. 120109, respondent was
25 convicted, upon his plea of nolo contendere, of one count of
26 violating Health and Safety Code section 11153, a felony
27 (prescribing and dispensing a controlled substance without a
28 legitimate medical purpose).

1 B. Pursuant to said conviction, the Municipal Court
2 placed respondent on summary probation for a period of three
3 years upon certain terms and conditions, including not to
4 prescribe any controlled substances unless properly
5 certified.

6 12. As a result of respondent's conduct described in
7 paragraph 11 above, respondent is guilty of Business and
8 Professions Code section 2236 and is subject to discipline.

9 FURTHER CHARGES AND ALLEGATIONS OF UNPROFESSIONAL
10 CONDUCT

11 Patient-Sally Jacobs aka Cece Montes

12 13. At all times herein mentioned, Sally Jacobs, is a
13 Special Agent for the Department of Justice, Bureau of Narcotic
14 Enforcement of the State of California and in that capacity posed
15 as a patient of respondent using the name CeCe Montes.

16 14. On or about September 20, 1989, at approximately
17 1:30 p.m., Jacobs, using the name of CeCe Montes, went to
18 respondent's office at 73 280 Highway 111, Palm Desert,
19 California, for the purpose of obtaining a prescription for
20 Valium. She was greeted in the front office by a nurse who took
21 a medical history of Jacobs. Jacobs informed the nurse that she
22 had just moved to Palm Springs from Nevada and that she had no
23 medical problems but needed a refill for Valium but did not have
24 the medicine bottle with her. While in the examining room,
25 Jacobs told respondent about her move to Palm Springs and that
26 she needed a refill for Valium. Respondent did not ask her who
27 was her previous doctor. Respondent asked her if she had taken 5
28 mg. Valium before. Jacobs told respondent yes. Respondent took

1 Jacobs blood pressure then wrote a prescription to Jacobs for
2 5 mg. 100 Valium. Jacobs paid an office visit fee of \$25.00 with
3 state funds and left respondent's offices.

4 15. On or about October 17, 1989, at approximately
5 2:10 p.m., Jacobs using the name of Montes, entered respondent's
6 medical office. Jacobs told respondent that she wanted to get a
7 refill prescription for Valium. Respondent asked Jacobs if she
8 was taking three Valiums a day. While respondent filled out the
9 prescription form for a renewal of Valium, Jacobs asked
10 respondent if he would write a prescription for Percodan for her
11 husband. Respondent told Jacobs he could not write the
12 prescription without the person being present. Jacobs told
13 respondent she would bring her husband in with on her next visit.
14 Respondent asked why she was taking the Valium and she advised
15 respondent that she had been taking them for years. Respondent
16 then took her blood pressure and handed her the prescription for
17 Valium. Jacobs paid an office visit fee of \$25.00 with state
18 funds and left respondent's offices.

19 16. On or about December 11, 1989, at approximately
20 2:30 p.m., Jacobs went to respondent's medical offices for the
21 purpose of obtaining a refill for her prescription of Valium.
22 At approximately 3:00 p.m., Jacobs was approached by a person
23 known as Nurse Mary. At this time, Nurse Mary asked Jacobs if
24 she needed Valium. Nurse Mary asked Jacobs what drug store she
25 used to fill her prescriptions. Nurse Mary told her that it was
26 a "Christmas present" and that she would order the prescription
27 for Jacobs over the phone. Nurse Mary then phoned in a
28 prescription of 5 mg. 100 Valium. Nurse Mary also told Jacobs

1 the next time she needed a refill, just to call her and she would
2 make it over the phone. Jacobs was told at the reception desk
3 there was no charge for the visit and left the respondent's
4 offices.

5 Patient-Robert L. Durham, aka J. Montes

6 17. At all times herein mentioned, Robert L. Durham,
7 is a Senior Special Investigator for the Medical Board of
8 California, Enforcement Unit, and in that capacity posed as a
9 patient of respondent using the name J. Montes.

10 18. On or about December 27, 1989, at approximately
11 2:00 p.m., Durham using the name of Montes, entered respondent's
12 medical office for the purpose of obtaining Valium. Durham
13 filled out a patient history form. Durham was then approached by
14 a nurse who asked him what kind of prescription he needed.
15 Durham told her Valium because he was a truck driver and need the
16 Valium to relax him. At approximately 2:40 p.m., Durham met with
17 respondent who asked him what strength of Valium he needed.
18 Respondent wrote a prescription for 10 mg. 100 Valium. There was
19 no physical examination. Durham paid an office visit of \$25.00
20 with state funds and left respondent's offices.

21 19. Respondent's conduct in providing the
22 prescriptions for drugs as alleged in paragraph 13 through 18,
23 hereinabove, is a violation of Business and Professions Code
24 section 2242, subdivision (a), in that said prescriptions were
25 provided without a good faith prior examination and a medical
26 indication therefor. Said conduct is grounds for discipline.

27 20. Respondent's prescribing of drugs as alleged in
28 paragraph 13 through 18, hereinabove, constitutes the clearly

1 excessive prescribing of drugs and is a violation of Business and
2 Professions Code section 725. Said conduct is grounds for
3 discipline.

4 21. Respondent's conduct in providing prescriptions
5 for a controlled substance as alleged in paragraphs 13 through
6 18, hereinabove, is a violation of Health and Safety Code section
7 11153, subdivision (a), in that said prescriptions were provided
8 without a legitimate medical purpose by a practitioner in the
9 course of his professional practice. Said conduct is grounds for
10 discipline.

11 WHEREFORE, complainant requests that the Board hold a
12 hearing on the matters alleged herein, and that following said
13 hearing, the Board issue a decision:

14 1. Revoking or suspending Certificate No. A8435
15 heretofore issued to respondent Joseph Mudry, M.D.;

16 2. Taking such other and further action as the Board
17 deems appropriate to protect the public health, safety and
18 welfare.

19 DATED: April 15, 1991

20

21

22

23

24

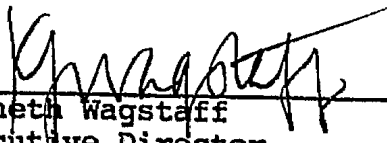
25

26

27

28

3-26-91
SD90AD0481
sg


Kenneth Wagstaff
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant